DELPHI
Automotive Systems

GL02-005
February 11, 2002

National Highway Traffic
Safety Administration
Docket Management
Room PL 401
Attn: Mr. Jonathan White
400 Seventh St.
Washington, DC 20590

In re: NHTSA Docket No. 2001-11108 Acceleration of Manufacturer's Remedy Program

Dear Mr. White:

Delphi Automotive Systems LLC (Delphi) is pleased to submit the following comments to the docket NHTSA 2001-11108 NPRM regarding the Agency's authority to require possible acceleration of the remedy for a recall

In the preamble, it is stated that:

> The agency expects that in the vast majority of recalls, this provision will not be invoked.

In fact, one would expect in the vast majority of cases such a provision could not reasonable be invoked. This provision would work well when the part being replaced is a commodity, such as a tire, a bolt, a relay or a replacement bulb; however, most other parts are unique to a given vehicle. This would mean that time would be required to tool the part, try out the tool(s), make modifications to the tool(s), run parts from the tool again, do a process capability study of the parts, run an acceptance study of the physical properties of the part, and perhaps do a strength and durability studies – before qualifying a replacement part. These are but some of the steps required by ISO 9000 and QS 9000 to assure the quality levels that are expected in today's vehicles. In addition to the time and cost that would be required to certify a new supplier, it would also divert the limited, qualified human resources to this effort instead of assuring that the normal process is running properly.

The preamble also states:

> [O]ne required finding, which would be adopted from the statute, would be that there is a risk of serious injury or death if the remedy program is not accelerated. To make this finding, there need only be a risk of such injury or death, not necessarily a high probability, and most safety recalls address circumstances where there is such a risk.

It is reasonable to say that Congress would not give the Secretary of Transportation discretionary powers (the Secretary **may** require) if it intended the powers to be a definitive requirement. It is further reasonable to say that if the powers are discretionary, the expectation is that they will be used in a reasonable and prudent manner. Accordingly, to take one of the implementation criteria and to state that it is a given is to make void Congress's intent.

It is one thing to require a manufacturer to work extra hours in order to assure an adequate supply of replacement parts are available for recall, but it is something else to tool new parts, put in additional lines, educate and pay one's competition to put in a line. This process will always be fraught with ambiguity. Is it reasonable to spend perhaps 10's of millions of dollars to save a week? two weeks? three weeks? We agree that at some point it may be; however, a reasonable prudent Secretary will need to consider the level of risk to motor vehicle safety in determining whether or not to exercise this new power. The level of risk to invoke these powers may not have to be "highly probably" but there ought to be some threshold in the Secretary's mind before he/she uses them. To cavalierly put risk out of the equation, is to void Congress's intent.

As part of a second requirement to invoke these powers, the Agency also noted that such powers could be invoked when it finds that a substantial aftermarket exists for a given part. Furthermore, the Agency states that it is up to the first manufacturer to assure that the replacement parts from the secondary source "are equivalent to the remedy parts supplied by the manufacturer."

Aftermarket parts, when supplied by other than the original Tier I or Tier II manufacturers, are often not the same quality or durability as the original parts. There are several reasons for this: 1) The secondary supplier people do not have the experience with the part that the primary Tier I or Tier II supplier has with the part having gone through a long development and qualification process, 2) The secondary parts are often reversed engineered without the supplier necessarily knowing the intent of each dimensional characteristic – in fact, a existing part is often used to fabricate a mold to make the part, allowing tolerances to fall wherever they may, 3) In order to beat the market price, parts are often fabricated with inferior materials, in cheap labor markets, and sometimes in some countries parts are even fabricated in homes with no quality control procedures at all, 4) In most of these cases the durability requirements are not known nor does the manufacturer have the capability to test them, 5) Typically the non-original suppliers of aftermarket parts do not have a bank of manpower to be able to divert them to a special project nor is there incentive to hire numbers of new people if the requirement will last only a few months at most.

If NHTSA were to invoke this method and hold the original manufacturer responsible for quality, the parts would have to be certified under QS-9000 and/or ISO-9000. This is not a simple matter and it is time consuming. The secondary manufacturer would have to be willing to go through this effort. It would require a lot of extra resources on his part which are typically not available. The first manufacturer often would have to divulge intellectual property to the secondary manufacturer which could have taken a lot of time

and resources for the first manufacturer to develop and thereby changing the playing field on that part forever going forward. Also the secondary manufacturer would have to be willing to allow the first manufacturer, who is normally a competitor, to step into his plant to access his quality program. While it might be in his interest to do this, if the program were to run for several years, it is not likely to be too interesting to him, if the program is only a few months long.

Finally, the Agency used the example of brake rotors as an example where a substantial aftermarket exists and which there might be parts to use to accelerate a recall. Based on our experience, a portion of these parts are supplied by removing parts from wrecked vehicles and then re-machined and another portion of them come from Asian countries where the production rate is limited and the emphasis is in production very low cost parts. Further our experience tells us that the machining usually has high run outs and poorer microfinishing as compared to the more precise parts provided as original equipment.

We have also had the opportunity to use small volume part suppliers for vehicles that are no longer in mass production. It typically takes about 8 months to produce the rotor tooling and another 4 months to quality the parts and the supplier. It should be noted that this short of a qualification program would only look at such things as strength and not long term durability. Our engineering estimates that on a rush order this time might be limited to 6-9 months but no shorter. Consequently, this approach – at least on the example that NHTSA chose to use in the preamble – would not gain the time that was hoped for.

It should also be noted that many small aftermarket manufacturers often do not have the wherewithal to assume the liability of a large volume endeavor. It is not likely that original parts manufacturers will assume the product liability of a hitherto unqualified supplier of parts. It is unlikely that many secondary supplier of parts could find insurance to cover a large warranty potential at a reasonable cost.

Delphi appreciates the opportunity to comment on this rulemaking. It is our hope that our comments will help to develop a better Final Rule. If you have any questions, please do not hesitate to contact me at 248 813 3362.

Sincerely,

+Michael J. McKale

Michael J. McKale
Manager
Product Regulations and Investigations